

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 8**

**LIDLAW INTERNATIONAL, INC. d/b/a  
LIDLAW EDUCATION SERVICES<sup>1</sup>,**

**Employer**

**and**

**Case No. 8-RC-16553**

**FREIGHT DRIVERS, DOCK AND HELPERS LOCAL  
NO. 24 a/w INTERNATIONAL BROTHERHOOD OF TEAMSTERS<sup>2</sup>**

**Petitioner**

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended (the Act), a hearing was held before a hearing officer of the National Labor Relations Board (the Board).

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned<sup>3</sup>.

**Introduction**

The only issue presented in this case is whether approximately 17 substitute bus drivers share a community of interest with the regular route bus drivers sufficient for inclusion in the bargaining unit. The Petitioner contends that substitute bus drivers should be excluded from the

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<sup>1</sup> The Employer's name appears as amended at the hearing.

<sup>2</sup> The Union's name appears as amended at the hearing.

<sup>3</sup> I find that the hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction in this matter; the labor organization involved claims to represent certain employees of the Employer; and a question affecting commerce exists concerning representation of these employees within the

unit because they are not regular part-time employees who share a community of interest with the regular route drivers but rather casual employees who should be properly excluded from the unit.<sup>4</sup> The Employer disagrees with that contention and seeks to include the substitute drivers in the unit.

For the reasons described more fully below, I find that the substitute drivers do not share a community of interest with the regular route bus drivers and should be excluded from the bargaining unit. Therefore, I find that the following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

*All full-time and regular part-time school bus drivers employed by the Employer at its 1033 Kelly Avenue, Akron Ohio facility, excluding all dispatchers, managers, substitute bus drivers, office clerical employees, professional employees, guards and supervisors as defined in the Act,*

Approximately 15 employees are in the unit found to be appropriate.

### **Facts**

The Employer is engaged in providing bus transportation in and around Akron, Ohio to schoolchildren and for private charter. The Employer has contracts with Akron Charter Schools and Saint Vincent Parochial School to provide bus services to and from school, and for field trips and extracurricular activities. The Employer assigns the regular route bus drivers at its Kelly Avenue facility in Akron, Ohio to these schools. The Employer also has a management contract

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meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act. The parties have filed post-hearing briefs, which I have carefully considered.

<sup>4</sup> The Petitioner initially argued at hearing that all substitute bus drivers should be excluded from the unit based on a lack of community of interest. In its post-hearing brief, the Petitioner asserts that Kerri Brost, a regular substitute driver, should be included in the unit. The record evidence reveals that Kerri Brost worked as the regular fill-in substitute and reported to work every morning at the Kelly Avenue facility between August 25<sup>th</sup> and September 29, 2003. During that time period, Brost also worked as a “hold down” driver filling in for a regular route driver, who was absent for a period of time. During this period of time, Brost worked a total of 24 hours on a route and 17 hours on field trips. Since the parties are now in agreement regarding Kerri Brost’s inclusion in the unit and there is no

with the Springfield School District to administer bus services. The Employer owns a significant number of buses it provides to the Springfield School District and also provides substitute drivers to that District. However, the Springfield School District employs and pays its regular route bus drivers. Further, the Ohio Association of Public School Employees represents the Springfield bus drivers. The Springfield School District bus drivers work at a separate facility located at 2960 Sanitarium Road, in Springfield, Ohio. Springfield is adjacent to Akron.

The regular route drivers working at the Kelly Avenue facility are employed 5 days a week during the school year, for a total of approximately 178 days per year. In addition to their morning and afternoon bus routes, the regular bus drivers also provide transportation for field trips and charters when such charters fall outside of their normal route time. Substitute drivers fill-in for regular route drivers when they are unavailable for their designated assignments. The Employer maintains a seniority list for regular route drivers to determine route bidding at the beginning of the school year.

The record reveals that the Employer provides substitute drivers for both the Kelly Avenue facility as well as Springfield School District. However, in the recent past, only one fill-in substitute, Kerry Brost reported to work at the Kelly Avenue facility on a daily basis. In this connection, Brost reported to work every day at the Kelly Avenue facility between August 25<sup>th</sup> and September 29, 2003 as either the “hold down” driver or fill-in substitute. While Brost was the “hold down” driver, substitute driver Gina Gaug reported to the Kelly Avenue facility as the fill-in substitute<sup>5</sup>. The Employer assigns the remaining substitute drivers to the Kelly Avenue facility on an as needed basis and consequently they are not there regularly.

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record evidence to contradict this assignment, I find that Kerri Brost should be included in the unit as a regular part-time employee.

<sup>5</sup> I find that Gina Gaug is not a regular part-time employee and should be excluded from the unit. The record reveals that Gaug became the fill-in substitute at the Kelly Avenue facility only while Brost worked as a “hold

## Analysis

In determining whether a unit is appropriate, the Board first considers the union's petition and whether that unit is appropriate. *Overnite Transportation Co.*, 322 NLRB 723 (1996). In defining an appropriate unit, the Board determines whether the employees share a community of interest.

In arriving at an appropriate unit determination, the Board weighs various community-of-interest factors, including the following:

[A] difference in method of wages or compensation; different hours of work; different employment benefits; separate supervision; the degree of dissimilar qualifications, training and skills; differences in job functions and amount of working time spent away from the employment or plant situs...the infrequency or lack of contact with other employees; lack of integration with the work functions of other employees or interchange with them; and the history of bargaining. *Id.* at 724.

Based upon the record evidence, I find that the substitute drivers do not share a sufficient community of interest with the regular route drivers to warrant their inclusion in the unit.

While the Employer contends that substitute drivers should be included in the petitioned-for unit it failed to provide any evidence regarding their wages. The Employer produced the hours worked for substitutes at the Kelly Avenue facility only for the period between August 25, and September 29, 2003. The hours ranged from 6.75 to 77. Unlike regular route drivers, substitute drivers do not receive health insurance or paid time off. More significantly, substitute drivers do not work a regular schedule but work on an as needed basis. As such, the Employer assigns substitute drivers to the Kelly Avenue facility depending upon availability of work (i.e. the absence of a regular route driver) and the substitute driver's availability for assignments. With respect to field trips, the Employer rotates the assignment among its substitutes. The

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down" driver. Since Gaug is no longer the fill-in substitute at the Kelly Avenue facility but a regular route driver for

record revealed that certain drivers do not work mornings while others do not work afternoons. Therefore, the record evidence revealed that substitute drivers could either reject or accept assignments depending upon their availability.

At the hearing, the Union provided Nancy Brost, a full-time route driver located at the Kelly Avenue facility, as its witness<sup>6</sup>. She testified that she did not see any other substitute driver on a regular basis at the Kelly Avenue facility other than Kerri Brost and Gina Gaug. In fact, Brost testified that she only saw the other substitute drivers at the Kelly Ave. facility perhaps once or twice or not at all since the school year began. She further testified that Kerri Brost, Gina Gaug and Melinda Hamilton were the only substitute drivers to attend monthly safety meetings at the Kelly Avenue facility<sup>7</sup>. Nancy Brost further testified that since employees infrequently “call off” at the Kelly Avenue facility, the substitute drivers are located at the Springfield terminal and only report to the Kelly Avenue facility when work becomes available.

As the Board stated in *Overnite Transportation*, “the appropriateness of each unit is supported by the facts of the particular case.” *Id. at 724*. In the instant case, the evidence showed that the substitute drivers and the regular route drivers do not work at the same facility, do not interact on a regular basis, do not attend the same safety meetings, do not share health insurance or paid time off benefits, and do not work consistent hours per week. There is no evidence to establish that their wages are similar. In finding that the substitute drivers should be excluded from the unit as casual employees I have also considered whether these employees perform unit work with sufficient regularity to warrant inclusion. *Pat’s Blue Ribbon, 286*

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Springfield School District, she is excluded from the unit.

<sup>6</sup> The Employer failed to provide any evidence to contradict Ms. Brost’s testimony.

<sup>7</sup> The evidence revealed that Melinda Hamilton attended the monthly safety meetings because she is the Safety Director at Springfield. Though she worked a total of nine hours on field trips between August 25, 2003 and September 29, 2003, the record showed that Hamilton is a regular Springfield route driver. I find that Hamilton

**NLRB 918 (1987).** The substitute drivers do not work regularly enough at the Akron facility to be included in the substitute unit.

I also find that there is an insufficient basis in this case to apply a formula to determine whether some of the substitute drivers share a sufficient community of interest with the regular route drivers to warrant inclusion. In some cases involving on-call employees, the Board has applied the *Davison-Paxon* formula to determine whether the on-call employee worked with sufficient regularity to show a community of interest with unit employees by working an average of 4 or more hours per week for the last quarter prior to the eligibility date. *Saratoga County Chapter NYSARC, Inc.,* , 314 NLRB 609 (1994); *Davison-Paxon Co.*, 185 NLRB 21 (1970). In the instant case, as noted above, the evidence only showed the total number of hours worked by the substitute drivers for a 5-week period between August 25<sup>th</sup> and September 29, 2003. Based on this limited period of time, there is insufficient evidence to conclude that the substitute drivers worked anything but a sporadic and irregular schedule depending upon the absence of a regular route bus driver and the number of school field trips scheduled during a route. In addition, the record evidence revealed that some substitute drivers became regular route drivers for the Springfield School District between August 25th and September 29, 2003.

On the basis of the foregoing, I find that the substitute bus drivers do not share a community of interest with the regular route drivers and shall exclude them from the unit.

### **DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to issue subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit

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does not share a community of interest with the Employer's regular route drivers and should not be included in the unit.

who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **FREIGHT DRIVERS, DOCK AND HELPERS LOCAL 24 a/w INTERNATIONAL BROTHERHOOD OF TEAMSTERS.**

#### **LIST OF VOTERS**

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties in the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is directed that an eligibility list containing the *full* names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within seven (7) days from the date of this Decision. *North Macon Health Care Facility*, 315 NLRB 359

(1994). The Regional Director shall make the list available to all parties to the election. No extension of time to file the list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

### **RIGHT TO REQUEST REVIEW**

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington by November 5, 2003.

**DATED** at Cleveland, Ohio this 22nd day of October 2003.

/s/ Frederick J. Calatrello

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Frederick J. Calatrello  
Regional Director  
National Labor Relations Board  
Region 8

460-7550-8700